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1905 1992

July 13, 1998

VIA HAND DELIVERY

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37201

Re: *Petition for an Investigation and/or Show Cause Order
to Determine Just and Reasonable Rates Charged by BellSouth
Telecommunications, Inc.*


Docket No: 98-00021

Dear Mr. Waddell:

Enclosed for filing are the original and thirteen copies of the Petition of AT&T Communications of the South Central States, Inc. for Leave to Intervene in the above-referenced case. I have also enclosed our check in the amount of \$25.00 for the filing fee.

Copies are being served on all known interested parties.

Yours very truly,


Val Sanford

VS/ghc
Enclosure

cc: James P. Lamoureux, Esq.
Garry Sharp

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

JUL 13 PM 2 52

**IN RE: Petition For An Investigation And/Or Show Cause Order
 To Determine Just and Reasonable Rates Charged By BellSouth
 Telecommunications, Inc.**

Docket No. 98-00021

**PETITION OF AT&T COMMUNICATIONS OF THE SOUTH
CENTRAL STATES, INC. FOR LEAVE TO INTERVENE**

AT&T Communications of the South Central States, Inc., pursuant to T.C.A. §4-5-310 and to the powers of the Tennessee Regulatory Authority ("TRA") to control participation in its proceedings, petitions the TRA to grant it leave to intervene in the above-captioned proceeding and to participate as its interests may appear; and for grounds states that:

1. AT&T Communications of the South Central States, Inc. ("AT&T") is a Delaware corporation, duly qualified to do business in Tennessee, holding Certificates of Public Convenience and Necessity authorizing it to provide interLATA, interexchange telecommunications services and to operate as a competing telecommunications service provider in intrastate commerce in the State of Tennessee.

2. AT&T's legal rights, duties, privileges, immunities, or other legal interests will be affected or determined by the outcome of this proceeding.

3. The amended and supplemental petition filed by the American Association of Retired Persons ("AARP") has demonstrated that for the period since January 1, 1996, there has been no valid determination of the justness and reasonableness of the rates of BellSouth

Telecommunications, Inc. ("BST"), either by the Tennessee Public Service Commission, the Tennessee Regulatory Authority, the Tennessee General Assembly or any other body; and that the TRA should make such a determination in this proceeding.

4. AARP's amended and supplemental petition further demonstrates that during the period since January 1, 1996, BST has reaped windfall profits far in excess of those which would have resulted from any just and reasonable rates; and that the TRA has the power to determine the justness and reasonableness of BST's rates for the period from January 1, 1996 until the effective date of a price regulation plan for BST adopted pursuant to T.C.A. §65-5-209.

5. A substantial part of the excessive profits received by BST during the period since January 1, 1996 are the direct result of excessive, unjust and unreasonable rates charged by BST to AT&T for switched access services in Tennessee intrastate commerce. AT&T, therefore, has a direct interest in this proceeding, which proceeding should determine the justness and reasonableness of the charges for switched access imposed by BST on AT&T during the period since January 1, 1996.

6. In Docket No. 97-07625, *In Re Petition of AT&T Communications of the South Central States, Inc. for Immediate Reduction of Switched Access Charges Imposed by BellSouth Telecommunications, Inc.*, filed December 23, 1997, AT&T sought the convening of a contested case to determine just and reasonable rates to be charged by BST for its switched access services. BST filed a motion to dismiss that petition, which was heard by the TRA on March 24, 1998. The TRA took the matter under advisement and no decision has been made.

7. AARP, on July 6, 1998, filed its amended and supplemental petition in this matter, setting forth the basis for a determination of the justness and reasonableness of BST's rates for the period between January 1, 1996 and the effective date of any price regulation plan for BST; and alleging means of providing a remedy for BST's excessive, windfall profits.

8. The amended and supplemental petition filed by AARP encompasses the efforts reflected in AT&T's petition for an immediate reduction in BST's excessive switched access charges, Docket No. 97-007625. On the granting of this petition for leave to intervene in this matter, AT&T will voluntarily withdraw, or voluntarily dismiss without prejudice, its petition in Docket No. 97-007625.

9. In the meantime, the Tennessee Supreme Court, on June 15, 1998, denied the application for permission to appeal the decision of the Court of Appeals in the BST price regulation plan case; and the mandate has issued from the Court of Appeals to the TRA with respect to the Judgment of the Court of Appeals in that case.

10. BST, on July 10, 1998, filed a motion in Docket No. 95-02614, *Application of BellSouth Telecommunications, Inc. for a Price Regulation Plan*, to implement the mandate of the Court of Appeals, asking the TRA promptly to enter an order approving BST's price regulation plan as originally filed.

11. There is not now, and there never has been, any question but that under T.C.A. §65-5-209, BST is entitled to have a price regulation plan approved. Questions, however, may remain as to the basis, the contents, the effective date and the effect of such a price regulation plan; and there may be other statutory and constitutional issues to be addressed in that matter.

12. The Court of Appeals expressly did not decide all the issues then before it in the BellSouth price regulation plan case, or which might arise on the remand. For example, the Court stated:

AT&T also argues that the Commission did not complete its task because it failed to review each of BellSouth's rates and tariffs to determine whether they were affordable and non-discriminatory. We need not address this issue in light of our holding that the Commission should have approved BellSouth's application for a price regulation plan based on the rates in existence on June 6, 1995. Since the Commission had already determined that these rates and tariffs were just and reasonable and nondiscriminatory, it is not required to make this determination again absent some specific reason to do so. (Emphasis added and footnote omitted)¹

The Court further summarized its decision:

In summary, we vacate the Commission's January 23, 1996 order and all related earlier orders with regard to BellSouth's application for a price regulation plan. Since the Commission has adopted its staff's conclusion that BellSouth's rate of return reported on its Form PSC-3.01 report for the twelve months ending March 31, 1995 is less than its current authorized rate of return, we remand the case to the Tennessee Regulatory Authority with directions to approve BellSouth's application for a price regulation plan. In light of our conclusion that the Commission did not have the authority to adjust the actual results on BellSouth's Form PSC-3.01 report, we need not consider the remaining issues raised by BellSouth and AT&T. These issues and all other issues raised by the parties are accordingly pretermitted. (Emphases added).

¹ The Court noted in footnote 42 that AT&T's contentions in this regard were also not decided in the *UTSE Price Plan* case. Indeed, those issues have never been decided on their merits.

13. At this point, as BST itself recognizes, the effective date of its price regulation plan has not been determined. Regardless of the date on which BST's price regulation plan is ultimately made effective, the necessity will remain for a determination of the justness and reasonableness of BST's rates for the period between January 1, 1996 and such effective date. For that reason, this proceeding should go forward and be disposed of expeditiously. All the parties, not to mention all those Tennessee consumers who pay rates to BellSouth, are entitled to a determination by the TRA, as to the justness and reasonableness of BST's rates for the period beginning January 1, 1996 -- if for no other reason, because such a determination either will protect BST from unjustified claims or will provide the basis for the recovery of excessive charges pursuant to T.C.A. §65-4-122(b) and (e).

14. Therefore, regardless of the outcome of the BST price regulation plan proceeding, or whether that outcome is reached soon or late, this proceeding should go forward and be disposed of expeditiously.

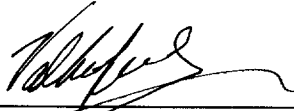
15. AT&T's participation in this proceeding will not impair the interests of justice or the orderly and prompt conduct of this proceeding.

16. AT&T seeks to intervene and participate in this proceeding as its interests may appear.

THE PREMISES CONSIDERED, THE PETITIONER PRAYS THAT:

1. An order be entered allowing AT&T to intervene and participate in this proceeding as its interests may appear and to receive copies of any notices, orders, or other documents that are filed herein; and

2. The Petitioner have such other, further and general relief as the justice of its cause may entitle it to receive.



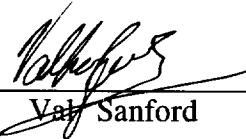
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Attorneys for Petitioner AT&T Communications
of the South Central States, Inc.

CERTIFICATE OF SERVICE

I, Val Sanford, hereby certify that a copy of the foregoing Petition for Leave to Intervene has been served on the following parties of record at the addresses shown by depositing a copy of the same in the U. S. First Class Mail, postage paid, this 13th day of July, 1998.



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